

THE STATE OF NEW HAMPSHIRE

United States District Court – District of NH

John Doe

v

Franklin Pierce University

Civil Action No. 1:22-cv-00188

**PLAINTIFF’S MOTION FOR LEAVE FOR LATE
FILING OF MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S
OBJECTION TO DEFENDANT’S PARTIAL MOTION TO DISMISS**

Plaintiff John Doe (“Plaintiff”), by and through counsel, hereby moves for leave for late filing of his Memorandum of Law in support of his response to the defendant’s Partial Motion to Dismiss.

In support, it is stated:

1. On September 7, 2022, Doe submitted his Objection to Defendant’s Partial Motion to Dismiss. At that time, undersigned counsel believed, incorrectly, that he had also uploaded the accompanying Memorandum of Law.
2. When Doe received the defendant’s Reply, which stated that his objection had not cited any case law and had not cited to any paragraphs of the Complaint, counsel went on ECF and observed that the Memorandum of Law never got uploaded to ECF.
3. Counsel and co-counsel Richard Guerriero had worked on that Memorandum of Law together the entire evening of September 7, until after 11:00 p.m. The pdf copy shows it was last saved at 11:15 p.m.

on September 7, the deadline date and 40 minutes after counsel filed the Objection to Defendant's Partial Motion to Dismiss.

4. Undersigned counsel has a specific memory of being on ECF after 11:00 p.m. and selecting "Memorandum in Support of Motion" because counsel couldn't find an ECF option for "Memorandum of Law." Counsel also has a text message on his phone from September 7, 2022, at 11:15 p.m., sent to Attorney Guerriero, which states: "Filing now." That message immediately follows Attorney Guerriero's message indicating his review of the Memorandum of Law was complete and it was ready to file (the Objection itself had already been filed, 40 minutes earlier). Counsel does not know what he did wrong, or what went wrong, but apparently, the Memorandum of Law never got uploaded to ECF.
5. Counsel for Doe asks that this court determine that he missed the deadline due to excusable neglect under Federal Rules of Civil Procedure 6(b)(1)(B), and allow the late filing.
6. Counsel has fully discussed the above with Plaintiff's counsel, Attorneys Ron Schneider and William Wahrer, who do not object to the late filing of the memorandum of law. It is filed as an attachment to this motion.
7. The parties have further agreed that the defense should be given seven additional days from the date of ruling on this motion, to file a replacement Reply, if desired.

WHEREFORE, Doe respectfully requests that this Court:

- 1) Grant leave to file the accompanying Memorandum of Law in Support of Objection to Motion to Dismiss;
- 2) Order that the defense may file a replacement Reply if it desires, within 7 days after ruling on this motion.

Respectfully submitted,
/s Theodore M. Lothstein

Theodore M. Lothstein
N.H. Bar. No. 10562

CERTIFICATION

I, Theodore Lothstein, hereby certify that a copy of this motion will be sent to all registered subscribers to this case on ECF, and further, that as soon as the identity of opposing counsel is known, I will send a copy of this motion and the accompanying Memorandum of Law to them.

/s Theodore M. Lothstein

Theodore M. Lothstein